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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/527,106	03/08/2005	Stephen George Appleton	05-179	9554

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MCDONNELL BOEHNEN HULBERT & BERGHOFF LLP
300 S. WACKER DRIVE
32ND FLOOR
CHICAGO, IL 60606

EXAMINER	
KASHNIKOW, ERIK	

ART UNIT	PAPER NUMBER
1794	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/527,106	APPLETON ET AL.	
	Examiner	Art Unit	
	ERIK KASHNIKOW	1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *05 December 2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-16* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-16* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. Claims 1-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bradstad et al. (US 4,230,924) in view of Walters (US 5,256,846).

2. In regards to claim 1 Bradstad et al. teach a food package for use within a microwave oven (column 1 lines14-15), wherein the phrase "for use within a microwave oven" is being considered as a statement of intended use. MPEP 2111.02.

3. In regards to claims 1, 3 and 9 Bradstad et al. teach that the packaging material be composed of a sheet of plastic, paper, or paper board which has a metallic coating thereon. The metallic coating is subdivided into islands or pads with non metallic strips between (column 2 lines 54-58). Bradstad et al. further teach that the metallic pads or islands which have a range of from 0.03125 inches to 0.75 inches which is equivalent to 793.75 to 19050μm with the strips in between being 0.0001 to 0.0625 inches wide, which is equivalent to 2.54 to 1587.5μm (claim 9). The invention of Bradstad et al. is

shown in figure 7.

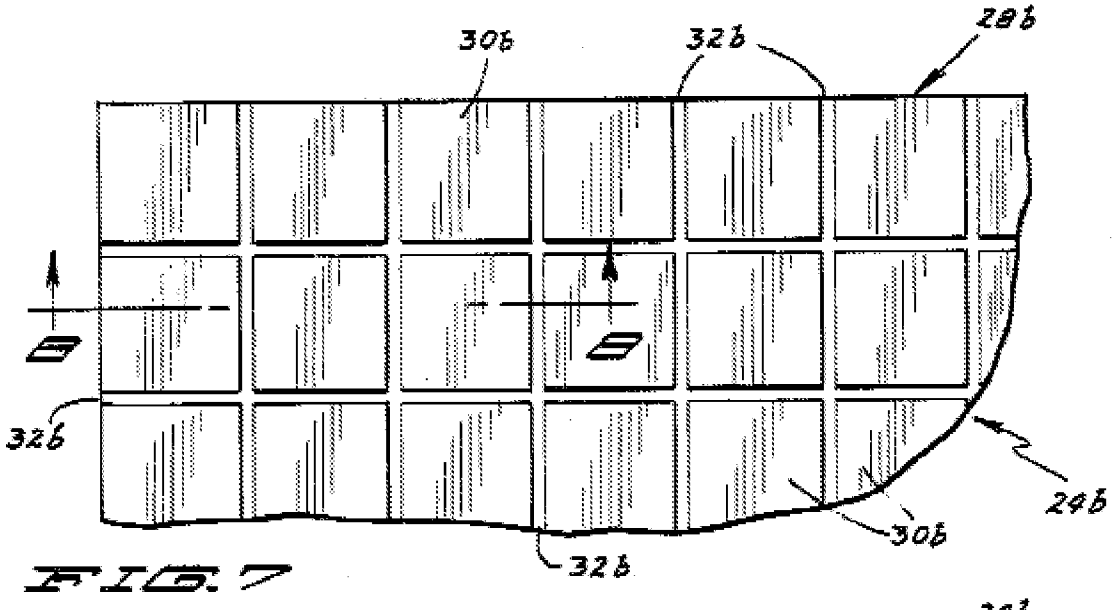

FIG. 7

4. In regards to claim 2 and 13 Bradstad et al. teach that their invention is designed to be used in microwave ovens with microwave frequencies on the order of 2450 MHz (column 3 line 41). They also state that the energy is absorbed by the food product that is to be heated (column 3 lines 45-46). Therefore it would be inherent that the material is substantially transparent to radiation at that frequency.

5. In regards to claim 6 Bradstad et al. teach that polyester be used as the plastic film (column 6 line 29).

6. In regards to claim 7 Bradstad et al teach that the metallic islands or pads can be formed from such metals as aluminum and gold (column 4 lines 2-6).

7. In regards to claim 8 Bradstad et al. teach that the shapes of the islands or pads can be squares (figure 7) or rectangles (column 6 line 9).

8. In regards to claim 10 and 11 Bradstad et al. also teach that their invention can be used to form a package (column 1 lines 59-65 and claim 1).

9. As stated above Bradstad et al. teach a package and packaging material for use in microwave ovens. However Bradstad et al. are silent regarding certain methods of making the package, as well as the dimensions of the metal patches.

10. Walters teaches a microwave barrier film for use in packaging of microwaveable food products (column 1 lines 5-11).

11. In regards to claim 1 Walters teaches that “it is well within the ordinary skill of those in the art to select the particular material of the reflective coating regions as well as the physical dimensions of the regions such as coating patterns, thickness, width and pitch and control both the degree of impermeability, the degree to which the reflective coating regions will reflect microwave energy and the amount of distribution of microwave energy that is transmitted through the polymeric substrate in the gaps and regions of the reflective material” (column 6 line 64 through column 7 line 5). Examiner points out that absent a showing of criticality with respect to "the dimensions of the metal patches" (a result effective variable), it would have been obvious to a person of ordinary skill in the art at the time of the invention to adjust the "dimension of the patch" through routine experimentation to values, including those presently claimed in order to achieve "a microwaveable cover sheet which has the degree of permeability desired, the amount of distribution of the microwave energy and the desired reflection of the microwave energy". It has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

12. In regards to claim 14 Walters et al teach that chemical vapor deposition processes can be used to make the claimed invention (Column 4 line 55-68, and column 5 line 59 to column 6 line 3).

13. In regards to claim 12 it is examiners opinion that it would be a design choice to create a bandage from the above material. One would only need to put the claimed material into proper dimensions to be used as a bandage. It is well within the skill of one of ordinary skill in the art at the time of the invention to change the dimensions of the claimed invention. It is also obvious that one of ordinary skill in the art could use the material to wrap a body part in much the same way one would use to wrap a foodstuff.

14. It would be obvious to one of ordinary skill in the art at the time of the invention to combine the invention of Bradstad et al. with the invention of Walters because the invention of Walters offers a lower susceptibility to arcing as well as improved impermeability to ultraviolet radiation, water vapor, and gaseous oxygen (column 1 line62-65). Further, given that it would have been obvious for one of ordinary skill in the art to arrive at the presently claimed patch dimension and given that Brastad et al. disclose packaging material made of the same material and shape as claimed, it is clear that the packaging material would intrinsically reflect thermal infrared radiation and intrinsically possess emissivity as presently claimed.

15. Claim15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bradstad et al. (US 4,230,924) in view of Walters (US 5,256,846) in further view of Yializis (US 6,106,627)

16. Bradstad et al. and Walters teach packages for use in packaging foodstuff that will be cooked in a microwave oven. However both Bradstad et al. and Walters are silent regarding the vacuum deposition method of making the product, which uses a mask.

17. Yializis teaches metal coated vacuum-deposited thin film polymers useful in food packaging applications (column 1 lines 5–13).

18. Yializis teaches that the patterns of metal on polymer films can be formed by depositing the metal through a masking device, which corresponds to the desired pattern (column 2 lines 19-36).

19. It would be obvious to use the method disclosed by Yializis to make the invention of Bradstad et al. because it provides a barrier to air and water vapor as well as allowing an individual to visually inspect the food (Yializis column 2 lines 1-7).

20. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bradstad et al. (US 4,230,924) in view of Walters (US 5,256,846) in further view of Aindow et al. (6,171,429).

21. Bradstad et al. and Walters teach packages for use in packaging foodstuff that will be cooked in a microwave oven. However both Bradstad et al. and Walters are silent regarding the heated stamp method of making the product.

22. Aindow et al. teach a method of printing a pattern of hot foil onto a substrate (column 1 line 65 to column 2 line 7). They teach that foil carrying a side with an adhesive is activated by heat is moved towards a printing position where a pattern is

transferred from of foil to the stock material (claim 2). A heated stamp is taught in column 3 lines 1-11). Aindow et al. also teach that the substrate to which the foil pattern is attached can be a polyester (column 2 lines 49-55). Aindow et al. further teach removing the excess foil (column 4 lines 17-31).

23. It would be obvious to use the method of Aindow et al. on the inventions of Bradstad et al. and Walters because the application of heat applied from the press helps to overcome the inability to transfer heat sufficiently (column 1 17-19).

Response to Arguments

24. In regards to Applicant's arguments concerning a *prima facie* case of obviousness and the combined references not resulting in the claimed invention, Examiner points to paragraph 11 of the instant office action. While it is agreed by Examiner that the references do not explicitly set out the patch dimensions, paragraph 11 gives states clear motivation as found in Walters (column 6 lines 64-column 7 line 5) for one of ordinary skill in the art to adjust the dimensions of the patch. This combined with a result effective variable argument (In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).) is sufficient to provide for a *prima facie* case of obviousness and would result in the instant invention. Applicants also argue that the examiner has not provided any reasoning why one skilled in the art would investigate patch dimensions smaller than those disclosed by Walter. However, as stated in paragraph 11 above, it is the examiner's position that one would use patch dimension, including that claimed, in order

to achieve microwave cover with desired permeability, amount of distribution of microwave energy, and desired reflection.

25. In regards to Applicant's argument regarding the word intrinsically, Examiner is using the word to point out that since the materials are the same and in the same design, the properties of the article would also be the same. Examiner points out that no arguments explaining why the properties would be different has been presented. Further, in regards to Applicant's argument regarding the word intrinsically it is not the examiner's position that Bradstad alone intrinsically reflects thermal infrared radiation and possesses emissivity as claimed. Rather as set forth in paragraph 14 above, it is clear that the packaging material referred to by Examiner as having these properties is the packaging material of Bradstad in combination with Walter.

26. In regards to Applicant's arguments that one of skill in the art would not have considered Walters, Examiner agrees that Walters title is "Microwaveable Barrier Films" however Examiner points to the abstract where it points out clearly that it is a barrier against gases and ultraviolet energy and a selective barrier to microwave energy, as is Bradstad et al.

27. In response to applicants argument that the motivation disclosed by the examiner for obtaining the desired patch dimension is to obtain desired reflection which is not something applicant desires, it is noted that "obviousness under 103 is not negated because the motivation to arrive at the claimed invention as disclosed by the prior art does not agree with appellant's motivation", *In re Dillon*, 16 USPQ2d 1897 (Fed. Cir. 1990), *In re Tomlinson*, 150 USPQ 623 (CCPA 1966).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to the Examiner whose telephone number is (571)270-3475. The examiner can normally be reached on Monday-Friday 7:30-5:00PM EST (Second Friday off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Callie Shosho can be reached on (571) 272-1123. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Erik Kashnikow
Examiner
Art Unit 1794

/Callie E. Shosho/
Supervisory Patent Examiner, Art Unit 1794